UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,140	02/05/2004	Kevin Himberger	RSW920030086US1	8439

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DILLON & YUDELL LLP
8911 N. CAPITAL OF TEXAS HWY.,
SUITE 2110
AUSTIN, TX 78759

EXAMINER
KIM, JUNG W

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _15 April 2008_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-27_ is/are pending in the application.

    4a) Of the above claim(s) _9,18 and 27_ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-8, 10-17 and 19-26_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _see enclosed_.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1-27 are pending.

2.   Claims 9, 18 and 27 are withdrawn as being nonelected claims to the restriction

requirement.

Election/Restrictions

3.   Applicant's election without traverse of claims 1-8, 10-17 and 19-26 in the reply

filed on 4/15/08 is acknowledged.

Double Patenting

4.   The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees.   A nonstatutory
obviousness-type double patenting rejection is appropriate where the conflicting claims
are not identical, but at least one examined application claim is not patentably distinct
from the reference claim(s) because the examined application claim is either anticipated
by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140
F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.
1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)
may be used to overcome an actual or provisional rejection based on a nonstatutory
double patenting ground provided the conflicting application or patent either is shown to
be commonly owned with this application, or claims an invention made as a result of
activities undertaken within the scope of a joint research agreement.
        Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

5.   Claims 1-8, 10-17 and 19-26 are provisionally rejected on the ground of

nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30

of copending Application No. 10,774,017. Although the conflicting claims are not

identical, they are not patentably distinct from each other because all limitations of

claims 1-8, 10-17 and 19-26 are defined in claims 1-30 of copending Application No.

10,774,017.

        This is a _provisional_ obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

6.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

7.   Claims 10-17 and 19-26 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter. Claims 10-17 and 19-26 are

directed respectively to a system and a computer product comprising a computer

readable storage medium having computer readable program code embodied herein.

Applicant's specification identifies embodiments wherein both system inventions and

computer product inventions comprising a computer readable storage medium having

computer readable program code embodied therein are embodied completely on

software, or embodied completely in a communication medium, or propagation medium,

or infrared medium, or optical fiber, or paper, or suitable medium upon which the

program is printed. (See Specification, pg. 4, lines 2-18). Software is descriptive

material per se and is not statutory because computer programs claimed as computer

listings per se, i.e., the descriptions or expressions of the programs, are not physical

"things." They are neither computer components nor statutory processes, as they

are not "acts" being performed. Such claimed computer programs do not define any

structural and functional interrelationships between the computer program and other

claimed elements of a computer which permit the computer program's functionality to be

realized. Propagation or communication medium is not recognized by the Office as one

of the 4 statutory categories of invention. And a program printed on paper is merely

nonfunctional descriptive material stored on a printing medium. It is not statutory since

no requisite functionality is present to satisfy the practical application requirement.

Claim Rejections - 35 USC § 112

8.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

9.   Claims 6, 15 and 24 are rejected under 35 U.S.C. 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

10.   Claims 6, 15 and 24 recite the limitation "the third blocking measure C". There is

insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 102

11.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

12.   Claims 1-8, 10-17 and 19-26 are rejected under 35 U.S.C. 102(e) as being

anticipated by Cox et al. US 6,738,814 (hereinafter Cox).

13.   As per claims 10-17, Cox discloses a system for processing communication

traffic, comprising:

        a.   means for detecting an anomaly in the communication traffic (col. 4:28-

        30); means for applying a first blocking measure A to the anomalous traffic that

        stops the anomalous traffic (4:32-35); and means for determining a second

        blocking measure B such that application of a logical combination of the first

        blocking measure A and the second blocking measure B to the anomalous traffic

        stops the anomalous traffic (4:54-58: limiting number of messages is effectuated

        only if attack happens more than once in a certain time period);

        b.   wherein the means for determining the second blocking measure

        comprises: means for applying a logical combination of A and the second

        blocking measure B given by (A & !B) to the anomalous traffic, wherein the

        logical combination (A & !B) is a less restrictive blocking measure than a logical

combination (A & B); and means for enforcing the logical combination (A & !B) if the logical combination (A & !B) stops the anomalous traffic (If the attack only happens once in a certain time period, then the first attack packet is dropped according to col. 4:28-35, but the measure of limiting the number of messages is not effectuated);

c.   further comprising: means for determining a third blocking measure C such that application of a logical combination of (A & !B) and the third blocking measure C to the anomalous traffic stops the anomalous traffic if the logical combination (A & !B) stops the anomalous traffic (4:21-24);

d.   wherein the means for determining the second blocking measure B further comprises: means for applying a logical combination (A & B) to the anomalous traffic if the logical combination (A & !B) does not stop the anomalous traffic; and means for enforcing the logical combination (A & B) if the logical combination (A & B) stops the anomalous traffic (if the attack happens more than once in the span of a certain time period, then the invention limits the number of messages [4:54-58]);

e.   further comprising: means for determining a third blocking measure C such that application of a logical combination of (A & B) and the third blocking measure C to the anomalous traffic stops the anomalous traffic if the logical combination (A & B) stops the anomalous traffic (4:21-24);

f.   further comprising: means for determining a second blocking measure C such that application of a logical combination of A and the third blocking measure

C to the anomalous traffic stops the anomalous traffic if the logical combination

(A & B) does not stop the anomalous traffic (4:58-61);

g.   wherein the means for detecting an anomaly in the communication traffic

comprises: means for detecting a pattern in a value of at least one protocol field

associated with the communication traffic (4:30-32);

h.   wherein the means for detecting an anomaly in the communication traffic

comprises: means for detecting that a flow rate of the anomalous traffic exceeds

a threshold. (4:55-56).

14.   As per claims 1-8, they are claims corresponding to claims 10-17, and they do

not teach or define above the information claimed in claims 10-17. Therefore, claims 1-

8 are rejected as being anticipated by Cox for the same reasons set forth in the

rejections of claims 10-17.

15.   As per claims 19-26, they are claims corresponding to claims 10-17, and they do

not teach or define above the information claimed in claims 10-17. Therefore, claims

19-26 are rejected as being anticipated by Cox for the same reasons set forth in the

rejections of claims 10-17.

Communications Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jung W. Kim whose telephone number is 571-272-3804. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jung Kim/
Primary Examiner, AU 2132